

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION

KATRINA DANIELLE MATEEN

PLAINTIFF

VS

CIVIL ACTION NO.: 1:23-cv-00306-TBM-RPM

CITY OF GULFPORT, No. 1., is being sued in their (sic) official capacity  
As the governing body for the City of Gulfport, Mississippi, located at  
2309 15<sup>th</sup> Street, in Gulfport, Mississippi 39501 for protecting then  
Officer/but now Sergeant Kenneth Nassar who shot and killed Jaheim  
McMillan, on October 6, 2022, at the Family Dollar Store, located at  
1016 Pass Road, in Gulfport, Mississippi 39501

AND

KENNETH NASSAR, No. 2, is being sued in his individual capacity  
As Officer/but now Sergeant and was at all time relevant to these  
Proceedings was employed by the Gulfport Police Department,  
Located at 2220 15<sup>th</sup> Street, in Gulfport, Mississippi, 39501, while  
Working under the color of state law at the time the Defendant shot  
And killed Jaheim McMillan, on October 6, 2022, at the Family Dollar  
Store, located at 1016 Pass Road, in Gulfport, Mississippi 39501

DEFENDANTS

**MOTION OF OFFICER KENNETH NASSAR TO ASSERT AFFIRMATIVE  
DEFENSE OF QUALIFIED IMMUNITY AND FOR OTHER RELIEF**

COMES NOW Officer Kenneth Nassar, identified as a Defendant in this matter, by and  
through his undersigned attorneys, and, pursuant to the provisions of L.U.Civ.R. 7(b)(2)(A) and  
16(b)(3), and without waiving any objection, response, immunity or defense he may have to the  
“Complaint,” be they affirmative or otherwise, submits this Motion for the purposes of  
notification to the Court that this Defendant has asserted the Affirmative Defense of Qualified  
Immunity in his Separate Answer to the “Civil Complaint and Action,” and would show unto this  
Honorable Court the following, to-wit:<sup>1</sup>

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<sup>1</sup>Officer Nassar’s Motion is pursued without waiving or limiting any defense, objection, right, or immunity available to or conferred upon the movant under the Federal Rules of Civil Procedure, including, without limitation, Rules 4, 8, 9, 12, 13, 14, 17, and 19, as well as any set forth in or afforded as a result of any local, state, and/or federal statutory or decisional law or

## I.

Plaintiff, Katrina Danielle Mateen (hereinafter “Plaintiff”) filed the document that initiated this proceeding (entitled “Civil Complaint and Action”) [Doc. 1] (hereinafter “Complaint”) on October 4, 2023, and named two (2) Defendants therein, one of which was Officer Kenneth Nassar “in his individual capacity,” the Movant herein. The Complaint purports to assert a federal cause of action for “excessive force” arising out of an encounter between this Defendant, a law enforcement officer, Jaheim McMillan (the decedent), and others that occurred on October 6, 2022, in the City of Gulfport. The Plaintiff alleges that “the amount of force” used against the decedent was “excessive” and in violation of “rights” under the Fourth Amendment to the United States Constitution. See Doc. 1 (¶ 7, “Count-2” (p. 10), ¶ 12). “When sued in their individual capacities, governmental employees are entitled to a presumption of qualified immunity from suit.” Terry v. City of New Orleans, 523 F. Supp. 2d 486, 492 (E.D.La. 2007) (citing Pfannstiel v. Marion, 918 F.2d 1178, 1183 (5<sup>th</sup> Cir. 1990)). To overcome this presumption, the Plaintiff has the burden to, among other things, prove that no reasonable, similarly situated government official would have considered the conduct of the officer to be lawful, under the circumstances known to him at the time. See Anderson v. Creighton, 483 U.S. 635, 640-41 (1987). The Complaint in this case asserts several causes of action against this Defendant in both his individual and official capacities.

## II.

The Local Rules of the Court (Rules 7(b)(2)(A) and 16(b)(3), L.U.Civ.R.) require that the affirmative defense of qualified immunity be raised by a separate motion in response to a complaint. In accordance with such requirement, and in view of well-settled decisional law with

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constitution, including, without limitation, qualified immunity.

respect to the staying of proceedings pending a determination of such immunities under the Rules, the Movant herein asserts his defense and entitlement to qualified immunity in this matter. See Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). The Movant would further state that he is entitled to a judgment as a matter of law on this defense and his intention is to file a motion for summary judgment on such basis.

WHEREFORE, Officer Kenneth Nassar, by way of special appearance herein, submits this Motion to Assert his Affirmative Defense of Qualified Immunity and for Other Relief, and respectfully requests that this Honorable Court preliminarily issue an Order staying proceedings of this case pending the determination of the Qualified Immunity defenses of this Defendant as well as to subsequently fully affirm and sustain the Qualified Immunity defense of this Defendant and dismiss the claims asserted against him on that basis. This Defendant further requests all other relief, equitable or otherwise, to which this Honorable Court finds that he is entitled.

RESPECTFULLY SUBMITTED, this the 1<sup>st</sup> day of August, 2024.

OFFICER KENNETH NASSAR,  
SPECIALLY APPEARING

By: s/ Jeffrey S. Bruni, Esq.  
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**CERTIFICATE OF SERVICE**

I, Jeffrey S. Bruni, Esq., Attorney for the movant herein, do hereby certify that I have on this date electronically filed the above and foregoing document with the Clerk of the Court using the ECF/MEC system, which should send notification of such filing to the Plaintiff, Katrina Mateen and to all counsel of record who have made an appearance in this matter, and that the undersigned has on this date had sent the above and foregoing document with attached exhibit to the Plaintiff, Katrina Mateen via First Class United States Mail, postage prepaid, to the address of 12069 George Street, Gulfport, Mississippi 39503.

This the 1<sup>st</sup> day of August, 2024.

*s/ Jeffrey S. Bruni* \_\_\_\_\_  
JEFFREY S. BRUNI

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